

Board of Equalization  
Proposed Contracts  
Over \$1 Million

Contractor	Start Date	Expire Date	Estimated Total Cost	Purpose
Toxics Substances Control, Department of	7/1/2006	6/30/2007 (current reimbursement)	\$5,574,000	<p>Services provided by BOE. The BOE administers the Hazardous Substances Tax Program for the Department of Toxics Substances Control. (Routine Renewal)</p> <p>Register taxpayers (hazardous waste generators, transporters and facilities); mail returns, deposit tax payments, follow up to obtain returns not filed; review filed returns, perform audits, assess fees, penalties and interest, collect amounts due; provide periodic reports to Department of Toxic Substances Control.</p> <p>The current Agreement was written for an eighteen (18) month period. The renewal agreement will be written for a twelve (12) month period.</p> <p>A copy of the current Agreement is attached.</p> <p>Since this is a reimbursement Agreement, the Department of Toxic Substances Control will prepare the FY 06-07 Agreement.</p>

Item P2  
Sub-item 2  
3/29/06

FULLY EXECUTED

BOE Agreement #04-029

AGREEMENT NUMBER 04-T2786	AMENDMENT NUMBER
REGISTRATION NUMBER	

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

Department of Toxic Substances Control

CONTRACTOR'S NAME

State Board of Equalization

2. The term of this

Agreement is: January 01, 2005 through June 30, 2006

3. The maximum amount

of this Agreement is: \$5,574,000.00  
Five Million Five Hundred Seventy-Four Thousand Dollars and No Cents

4. The parties agree to comply with the terms and conditions on the following exhibits which are by reference made a part of the Agreement:

Exhibit A - Scope of Work

5 Page(s)

Exhibit B - Budget Detail and Payment Provision

7 Page(s)

\* Exhibit C - General Terms and Conditions

GIA 101  
(Number)

1/01  
(Dated)

Exhibit D - Special Terms and Conditions

1 Page(s)

Exhibit E - Additional Provisions

11 Page(s)

\* View at <http://www.ois.dos.ca.gov> - Standard Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

State Board of Equalization

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Robert Sherburne Manager

ADDRESS

P. O. Box 942879  
Sacramento, CA 94279-0024

STATE OF CALIFORNIA  
AGENCY NAME

Department of Toxic Substances Control

BY (Authorized Signature)

DATE SIGNED (Do not type)

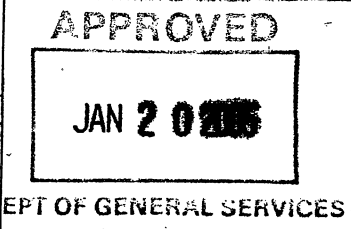
PRINTED NAME AND TITLE OF PERSON SIGNING

Sandra Polindexter Chief, Business Services

ADDRESS

P.O. Box 806  
Sacramento, CA 95812-0806

CALIFORNIA  
Department of General Services  
Use Only



Exempt Per \_\_\_\_\_

## **SCOPE OF WORK**

1. This Interagency Agreement is entered into between the Department of Toxic Substances Control, hereafter referred to as DTSC, and the State Board of Equalization, hereafter referred to as BOE.
2. This Interagency Agreement is established pursuant to Section 25174(c) of the Health and Safety Code for the collection of fees by BOE for deposit in the Hazardous Waste Control Account (HWCA) and in accordance with Part 22, Division 2 of the Revenue and Taxation Code, beginning with Section 43001. It shall also include the collection of fees for deposit in the Toxic Substances Control Account (TSCA). DTSC agrees to reimburse BOE for costs associated with collection of these fees and perform all the activities outlined in Exhibit A, Item 6 and BOE shall perform all the activities outlined in Exhibit A, Item 5.
3. The Contract Managers during the term of this Interagency Agreement will be:

<b>Department of Toxic Substances Control</b>	<b>Board of Equalization</b>
Miles Burnett, Chief, Fees Unit	Dennis Maciel, Chief Excise Taxes and Fees Division
916-322-2448	916-327-3276
916- 445-9549 (FAX)	916-323-9297 (FAX)

Direct all inquiries to the respective Contract Manager:

<b>Department of Toxic Substances Control</b>	<b>Board of Equalization</b>
Fees Unit	Excise Taxes & Fees Division
Miles Burnett, Chief	Dennis Maciel, Chief
P. O. Box 806 Sacramento CA 95812-0806	P.O. Box 942879, MIC: 56 Sacramento CA 94279-0056

Contract Managers can be changed upon written notification to respective State agencies.

**SCOPE OF WORK (continued)**

4. DTSC and BOE agree to cooperate fully, within the limits of the funding provided for in the contract, in the exchange of information available to them individually that may be of use to the other in the administration of the aforementioned accounts. Each agency further agrees to interact and share information for the purpose of identifying fee payers who are subject to these fees.

**BOE RESPONSIBILITIES**

5. The Board of Equalization (BOE) within the limits of the funding provided, shall perform all activities necessary to collect the fees including but not limited to:
  - a. Registration of fee payers:
    - 1) Register hazardous waste generators, sites accepting waste for disposal and facilities as well as businesses identified by standard industry codes subject to the environmental fee.
    - 2) Assign an account number to each feepayer as identified for the appropriate fee programs.
    - 3) Record the identity of each feepayer in a registration file using the fee payer's name, address, account number and EPA number or EDD number, as appropriate.
    - 4) Update the registration file to maintain current information.
  - b. Design, print, mail and receive returns, and conduct follow-up measures to obtain returns not filed.
  - c. Deposit money received to appropriate account, period, and fund.
  - d. Store and/or electronically scan returns and related documents.
  - e. As to examining returns:
    - 1) Review returns for errors and late payments.
    - 2) Assess applicable penalty and interest on late returns.

**BOE RESPONSIBILITIES (continued)**

- 3) Assess applicable fee, penalty and interest on partial remittance and no-remittance returns.
  - 4) Contact fee payers regarding errors on returns.
  - 5) Collect any fee, penalty and interest not paid.
  - 6) Perform field or desk audits when deemed necessary by BOE.
- f. Issue notices of determination when appropriate.
  - g. Monitor, control, analyze and process petitions and claims for refund through the appeals process.
  - h. Issue Notices of Redetermination or Notices of Refund.
  - i. Provide individual feepayer collection or refund information upon request.
  - j. Provide monthly reports on amount collected, refunded, petitioned/appealed, and account receivable balances, and other reports as may be available without additional programming costs.
  - k. BOE shall report on the level of activities as described below for each fee during fiscal year 2004/2005 and fiscal year 2005/2006.

The information should include, but not be limited to the following:

- 1) The amount collected for each fee.
- 2) The amount collected from returns or initial billings, and from other collections for each fee.
- 3) The number of petitions filed, resolved, and pending each year, and the dollar amount of petitions filed, resolved, and pending for each fee.
- 4) The number of payments processed and the number of returns or billings issued for each fee.

The fees included in the report shall be all the HWCA and TSCA fees that are assessed by BOE pursuant to Chapter 6.5 (commencing with Section 25100), of the Health and Safety Code.

- l. Provide quarterly reports to DTSC showing the total number of hours spent by appeals attorney staff processing DTSC's petitions.
- m. Provide advisory services to the public.
- n. Provide one annual revenue estimate and one revised estimate as needed for the annual budget cycle. Provide revenue estimates on the impact of proposed legislation.
- o. BOE agrees to cooperate fully with DTSC or its designated representatives to provide DTSC with information on the duties it performs for DTSC under this Interagency Agreement. This information will include, but is not limited to, the processes used, and the type and amount of resources used to perform each task or subtask.
- p. The BOE agrees to work with DTSC in implementing H&SC 25189.3 which pertains to facility permit suspension for non-payment of activity and annual facility fees.
- q. DTSC and BOE have developed guidelines for the timely exchange of information between our organizations. BOE has agreed to implement the guidelines as identified paragraph D of Exhibit E.
- r. BOE agrees to compare the DTSC facility billing list with BOE return data and provide DTSC a report that lists the discrepancies.

#### **DTSC RESPONSIBILITIES**

- 6. The Department of Toxic Substances Control (DTSC) shall provide the Board of Equalization (BOE), in support of BOE's registration, return processing, audit and collection program, the following:
  - a. DTSC shall continue to make a data file, accessible for download through their online manifest system (HWTS), of all generators who manifested waste for 2003 and 2004. The data file shall show the total number of tons by EPA ID number, TSD facility, waste classification, and disposal method. In addition, DTSC shall also provide a corresponding data file which shows the name, location, mailing address, and contact information applicable to each EPA ID number. Alternatively, DTSC may make these data files available on CD-ROM tape cartridges, or E-mail.
  - b. DTSC shall continue to provide access to the online manifests system (HWTS) which is critical to the proper administration of the Hazardous Waste Fee program. At any time DTSC is aware that the online manifests system's data is not accurate or the manifest images are not available,

DTSC shall contact BOE immediately to advise BOE of the problem and the time necessary to resolve the problem.

- c. BOE is continuing the enhancement of its data systems at the Teale Data Center. Development of new program applications or reports that are not currently produced for DTSC must be negotiated and amended into the existing contract with the approval of both parties.
- d. DTSC will deliver an activity fee transmittal to BOE for all activity fees after completion of the Administrative Completeness Review (within 45 days of the application date) by DTSC to assure the billing is received near the time the activity took place.
- e. DTSC will notify BOE at the end of each calendar quarter of PBR, CA, and CE permit changes and new permits after DTSC's approval of the permit or change.
- f. Any payments received by DTSC, accompanied by any billing document issued by BOE, will be sent to BOE immediately to allow crediting of the payment to prevent the mailing of unnecessary delinquency billings or other collection action.
- g. DTSC will provide BOE a listing of all new EPA numbers issued to generators for California sites for each quarter. The list will include the EPA number, name, address, and phone number of the applicant. The report is to be delivered to the BOE within sixty days from the end of each quarter.
- h. DTSC will notify the BOE by memo within two weeks of accepting a case for settlement review or other settlement consideration in order to avoid miscommunication and to display the level of cooperation existing between our agencies to the impacted fee payers.
- i. The DTSC agrees to work with BOE in implementing H&SC 25189.3 which pertains to facility permit suspension for non-payment of activity and annual facility fees.
- j. DTSC and BOE have developed guidelines for the timely exchange of information between our organizations. DTSC has agreed to implement the guidelines as identified in paragraph D of Exhibit E.

## **BUDGET DETAIL AND PAYMENT PROVISIONS**

### **Invoicing and Payment**

1. BOE will bill DTSC not more often than quarterly in arrears. Invoices shall include DTSC's name, time period covered, list of charges and hours billed itemized in accordance with the Budget, Exhibit B and Exhibits I, II and III, which are incorporated into this agreement and made a part hereof and the total amount requested. Invoice will be mailed in duplicate (original plus one copy) to:

Department of Toxic Substances Control  
Chief, Contracts and Office Services  
1001 "I" Street, 21<sup>st</sup> Floor  
P.O. Box 806  
Sacramento, California 95812-0806

2. An invoice from BOE to DTSC will be deemed appropriate and approved if DTSC does not notify BOE within 45 days from the date the invoice is received by DTSC. In the event the invoice is disputed by DTSC, the DTSC contract manager shall notify the BOE contract manager in writing of the following:
  - a. BOE invoice number
  - b. amount disputed and/or requested credit
  - c. basis of dispute

If BOE agrees with any part of DTSC's claim, it shall issue a "credit invoice" or other suitable notification identifying the dollar amount to be credited. If BOE does not agree with DTSC's claim, it shall notify DTSC in writing of the reason for denial of the claim. Either party may request resolution of an invoice dispute under the terms of this agreement.

3. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.



**State Board of Equalization  
Hazardous Substances Program  
Hazardous Substances Control Account**

	Jan. 2005-June 2005 Fiscal Year <u>e/ f/</u> (1)	2005-06 FY Fiscal Year <u>e/ f/</u>
<b>1. Personal Services <u>a/</u></b>		
Salary & Wages	\$ 1,128,500	\$ 2,257,000
Salary Savings	-82,000	-164,000
Net Total, Salaries & Wages	<u>1,046,500</u>	<u>2,093,000</u>
Staff Benefits	<u>285,500</u>	<u>571,000</u>
Subtotal, Personal Services	<u>1,332,000</u>	<u>2,664,000</u>
<b>2. Operating Expense &amp; Equipment <u>a/</u></b>		
General Expense	39,500	79,000
Communications	22,000	44,000
Travel In-State	2,500	5,000
Facilities Operations	<u>130,000</u>	<u>260,000</u>
Subtotal, Operating Expense & Equipment	<u>194,000</u>	<u>388,000</u>
<b>3. Administrative Support <u>b/</u></b>		
Mail Room	42,000	84,000
Cashiers	33,000	66,000
CATS	0	0
Data Entry & Verification	26,000	52,000
Legal	15,000	30,000
Technology Services	<u>48,000</u>	<u>96,000</u>
Subtotal, Administrative Services	<u>164,000 <u>d/</u></u>	<u>328,000</u>
<b>4. Overhead <u>c/</u></b>	<u>168,000</u>	<u>336,000</u>
<b>TOTAL</b>	<u><u>\$ 1,858,000</u></u>	<u><u>\$ 3,716,000</u></u>

a/ Property & Special Taxes Department

b/ Administrative Support includes both Personal Services and Operating Expense & Equipment.

c/ Pro rata share of overhead costs.

d/ The budgeted base within the category of Administrative Support has been adjusted based on actual costs incurred during the 2003-04 fiscal year.

e/ The cost of each budget cost category (Items 1 through 4) may vary up to 10% without DTSC approval so long as the total budgeted for that program budget is not exceeded. The BOE Contract Manager shall request, via a memorandum, the DTSC Contract Manager's approval for any budget cost category Transfer of Budget Allotments (TBAs) exceeding 10%. Upon signed approval by both parties, the memorandum will be attached to and made part of this interagency agreement.

f/ A contract amendment may be necessary depending on agreements reached with collective bargaining units or other budget development issues.

Financial Management Division  
Budget Operations  
September 29, 2004

BILLING BREAKDOWN				
	2004-05 Fiscal Year	3rd Qtr. Billing	4th Qtr. Billing	Total Billing
1. Personal Services: <u>a/</u>				
Salaries and Wages	\$1,128,500			
Salary Savings	-82,000			\$0
Subtotal	1,046,500			0
Staff Benefits	285,500			0
Total Personal Services	1,332,000	0	0	0
2. Operating Expense & Equipment: <u>b/</u>				
General Expense	39,500			0
Communications	22,000			0
Travel In-State	2,500			0
Facilities Operations <u>c/</u>	130,000			0
Total OE & E	194,000	0	0	0
3. Administrative Support:				
Mail Services <u>c/</u>	42,000			0
Cashier <u>c/</u>	33,000			0
Data Entry & Verification <u>c/</u>	26,000			0
Legal <u>d/</u>	15,000			0
Technology Services <u>c/</u>	48,000			0
Subtotal Adm. Support	164,000	0	0	0
4. Overhead <u>c/</u>	168,000	0	0	0
TOTAL	\$1,858,000	\$0	\$0	\$0

a/ See Exhibit II for additional detail in support of quarterly billing.

b/ Actual amounts by quarter.

c/ One-quarter of contract amount for the first three quarters, adjustment made in the fourth quarter for actual.

d/ See Exhibit III for additional detail in support of quarterly billing.

BILLING BREAKDOWN				
	2005-06 Fiscal Year	1st & 2nd Qtr. Billing	3rd Qtr. Billing	4th Qtr. Billing
1. Personal Services: <u>a/</u>				Total Billing
Salaries and Wages	\$2,257,000			
Salary Savings	-164,000			
Subtotal	2,093,000			\$0
Staff Benefits	571,000			0
Total Personal Services	2,664,000	0	0	0
2. Operating Expense & Equipment: <u>b/</u>				
General Expense	79,000			0
Communications	44,000			0
Travel In-State	5,000			0
Facilities Operations <u>c/</u>	260,000			0
Total OE & E	388,000	0	0	0
3. Administrative Support:				
Mail Services <u>c/</u>	84,000			0
Cashier <u>c/</u>	66,000			0
Data Entry & Verification <u>c/</u>	52,000			0
Legal <u>d/</u>	30,000			0
Technology Services <u>c/</u>	96,000			0
Subtotal Adm. Support	328,000	0	0	0
4. Overhead <u>c/</u>	336,000	0	0	0
TOTAL	\$3,716,000	\$0	\$0	\$0

a/ See Exhibit II for additional detail in support of quarterly billing.

b/ Actual amounts by quarter.

c/ One-quarter of contract amount for the first three quarters, adjustment made in the fourth quarter for actual.

d/ See Exhibit III for additional detail in support of quarterly billing.

**HAZARDOUS SUBSTANCES CONTROL ACCOUNT - TIME REPORTING DETAIL**

EXHIBIT II  
 Page 1 of 2

Quarter of Fiscal Year

**AUDIT ACTIVITY - HOURS BY FUNCTION b/**

Supervision	Review	Direct Field	Selection	Worksheet	Petitions and Refunds	Direct Support	Indirect Support	Training	TOTAL HOURS c/
5301	5302	5303	5304	5305	5306	5308	5318	3001	
									0.0
									0.0
									0.0
									0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

**COMPLIANCE ACTIVITY - HOURS BY FUNCTION b/**

Supervision	Registration	Close Out	Collections	Returns	Direct Support	Advisory Service	Indirect Support	Training	TOTAL HOURS
5401	5402	5403	5404	5405	5406	5408	5416	3002	
									0.0
									0.0
									0.0
									0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Classification Group a/

CLERICAL

AUDIT

COMPLIANCE

ADMINISTRATIVE

TOTAL

Classification Group a/

CLERICAL

AUDIT

COMPLIANCE

ADMINISTRATIVE

TOTAL

a/ CLERICAL - Office Assistants, Office Technicians, Tax Technicians and Supervising Tax Technicians.

AUDIT - Tax Auditors, Associate Tax Auditors, Staff Tax Auditors, BT Specialists and Supervising Tax Auditors.

COMPLIANCE - BT Representatives, BT Compliance Specialists, BT Specialists and BT Compliance Supervisors.

ADMINISTRATIVE - CEA's, BT Administrators, Staff Services Managers, Associate Governmental

Program Analysts, and Associate Information Systems Analysts.

b/ See time reporting attachment for description of time reporting codes.

# HAZARDOUS SUBSTANCES CONTROL ACCOUNT - TIME REPORTING DETAIL

EXHIBIT II  
 Page 2 of 2

Quarter of Fiscal Year

## AUDIT ACTIVITY - SUMMARY OF ACTUAL HOURS

Classification Group a/	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	YEAR-TO DATE TOTAL
CLERICAL	0.0	0.0	0.0	0.0	0.0
AUDIT	0.0	0.0	0.0	0.0	0.0
COMPLIANCE	0.0	0.0	0.0	0.0	0.0
ADMINISTRATIVE	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0

## COMPLIANCE ACTIVITY - SUMMARY OF ACTUAL HOURS

Classification Group a/	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	YEAR-TO DATE TOTAL
CLERICAL	0.0	0.0	0.0	0.0	0.0
AUDIT	0.0	0.0	0.0	0.0	0.0
COMPLIANCE	0.0	0.0	0.0	0.0	0.0
ADMINISTRATIVE	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0

a/ CLERICAL - Office Assistants, Office Technicians, Tax Technicians and Supervising Tax Technicians.  
 AUDIT - Tax Auditors, Associate Tax Auditors, Staff Tax Auditors, BT Specialists and Supervising Tax Auditors.  
 COMPLIANCE - BT Representatives, BT Compliance Specialists, BT Specialists and BT Compliance Supervisors.  
 ADMINISTRATIVE - CEA's, BT Administrators, Staff Services Managers, Associate Governmental  
 Program Analysts, and Associate Information Systems Analysts.

STATE BOARD OF EQUALIZATION  
LEGAL DIVISION

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DETAIL OF DIRECT HOURS EXPENDED ON HAZARDOUS WASTE PROGRAM

FISCAL YEAR \_\_\_\_\_

FUNCTION CODES	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
19 SUPERVISION					0.0
20/21 APPEALS					0.0
11 HEARINGS					0.0
12 COLLECTIONS					0.0
13 LEGISLATION					0.0
14 LITIGATION					0.0
15 OPINIONS					0.0
16 PUBLICATIONS					0.0
17 REGULATIONS					0.0
18 GENERAL					0.0
22 ENFORCEMENT					0.0
TOTAL HOURS	0.0	0.0	0.0	0.0	0.0

FINANCIAL MANAGEMENT DIVISION  
BUDGET SECTION

**SPECIAL TERMS AND CONDITIONS:**

**Agreement Limits**

Other than as specified herein, no document or communication passing between the parties shall be deemed a part of this Agreement.

**Amendment/Cancellation**

Notwithstanding the current GIA Amendment Clause, DTSC adds the following:

This agreement may be amended upon written mutual consent, or cancelled by either party, upon thirty (30) days written notice unless otherwise stated.

**Entire Agreement**

This Agreement supersedes all prior agreements; oral or written, made with respect to the services provided herein.

## **ADDITIONAL PROVISIONS**

### **I. GENERAL PROVISIONS AND DEFINITIONS**

#### **A. Definitions**

As used in this Interagency Agreement, the following words have the following meanings:

- (1) "Fee" means a hazardous waste fee or tax imposed by Chapter 6.5, which is collected pursuant to Part 22, Division 2 of the Revenue and Taxation Code.
- (2) "Board staff" means the staff of the State Board of Equalization.
- (3) "Board of Equalization" means the five-member State Board of Equalization.
- (4) "Department" means the Department of Toxic Substances Control.
- (5) "Appeals conference" means an informal meeting conducted by a representative of the Board's Appeals Section to discuss a petition for redetermination or claim for refund.
- (6) "Hearing" means a hearing conducted by the Board of Equalization at one of its regularly-scheduled meetings.
- (7) Environmental Fees Administrator means Chief, Excise Taxes and Fees Division.

#### **B. Statement of Intent**

This Interagency Agreement is intended to structure and foster communication between the Board staff and the Department. The Board staff and Department agree that it is the intention of each agency to contact the other whenever significant issues arise concerning the interpretation or application of the hazardous waste fee law.

#### **C. Referral to Attorney General**

If the Board staff and Department staff cannot agree concerning an interpretation of the hazardous waste fee law which involves the authority and/or responsibility of each agency, and the issue is not resolved by this Interagency Agreement, the Board's Executive Director and the Department's Director will attempt to resolve the matter. If no agreement is reached after the two agencies have made all possible efforts to resolve



the dispute, the Board and/or the Department may request an opinion from the Attorney General which resolves the matter. The request shall suggest that the question be considered by the Environmental Law Section of the Attorney General's Office.

D. Guidelines for Timely Exchange of Information

- (1) For settlement cases, the Board will provide the Department with a quarterly report of all cases over 6 months in age (March 31, June 30, September 30, and December 31). Upon receipt of the list the Department will respond regarding the status of each case and advise the Board of any discrepancies within 30 days. All cases start the six-month aging process beginning with the date of the letter requesting settlement. The Board, upon notification by the Department or referral of a case by the Board, will provide the Department with a summary of the case, any related file data, and any pertinent correspondence that might facilitate the Department's review of the settlement request. The Department will notify the Board immediately when a case is either accepted into settlement, not accepted, or subsequently rejected by either party. The Department will provide the Board with a copy of each settlement so timely action can be taken pursuant to the agreement.
- (2) For correspondence or issues related to appeal cases, the party receiving a request to provide information or an opinion would have 60 days to reply and an extension for an additional 30 days would be available.
- (3) For normal correspondence or general questions, those not requiring an extensive legal interpretation or waste classification requests, the Department or Board staff would generally expect a reply from the other agency within 30 days unless some urgency is indicated in the original request. Extensions could be requested and granted as needed but the answering party will initiate some type of communication on the progress and reasons for the extension. The types of requests falling into this group are most often questions on the status of a permit, a request for factual information on a fee payer or some type of analysis will have 60 days to reply, however, extensions can be arranged when circumstances warrant.

## II. PROCEDURE DURING AN AUDIT OR INVESTIGATION

### A. Conduct of Audits and Investigations and Decisions Based Thereon

While an audit or investigation is being conducted and/or before the issuance of a notice of determination, the Board staff has complete discretion concerning the level of audit or investigation of any individual fee payer. Based on the audit or investigation findings, Board staff will make a decision concerning the fee based on existing precedent and the relevant statutes, except as set forth below. Board staff may provide the Department's designated representative with any information discovered through the audit or investigation that is pertinent to the imposition of a tax or fee liability.

### B. Billings or Changes in Billings Which Impact the Department's Regulatory Program

After an audit or investigation, Board staff may conclude, based on a new or novel interpretation of the hazardous waste fee law, that it is appropriate to issue a determination for one or more of the hazardous waste fees. This new or novel interpretation of the law may impact the regulatory program administered by the Department. For example, a factual situation that required the Board staff to interpret the definition of "responsible party," "closure," or "disposal" would have such an impact on the Department's regulatory program. However, a determination of the correct application of the statute of limitations, of whether an entity is a corporation, or of whether a fee may be returned when an application is withdrawn, would not have such an impact. Where the Board staff's interpretation of the hazardous waste fee law impacts the Department's regulatory program, Board staff will follow the procedure set forth below.

### C. Notice to Department of Billing or Change in Billing

Where the Board staff's issuance of a determination requires an interpretation of the hazardous waste fee law that impacts the Department's regulatory program, the Environmental Fees Administrator will advise the Department's designated representative in writing of the Board staff's recommended interpretation at least two weeks before Board staff schedules a meeting with the fee payer to discuss the results of the audit, or two weeks before the notice of determination is sent, whichever is earlier. If the Department's designated representative responds to the Environmental Fees Administrator in writing before the scheduled meeting or before the determination issues, Board staff will follow the opinion expressed by the Department concerning imposition of the fee.

If the Department does not respond in writing before the scheduled meeting or before the notice of determination is sent, Board staff may proceed in accordance with the interpretation given to the Department.

In cases that do not present new or novel factual situations or require an interpretation of the hazardous waste fee law which impacts the Department's regulatory program, the Environmental Fees Administrator will, upon request, advise the Department's designated representative of the basis for the issuance of the determination.

D. Decisions Concerning Whether a Waste is Hazardous

The Department has the sole discretion to determine whether a substance is a waste and/or a hazardous waste, and Board staff will not make such a determination. Any disputes concerning whether a substance is a hazardous waste will be resolved by the Department.

It is agreed that the Department will implement a procedure for resolving disputes concerning the classification of waste that provides the fee payer an opportunity to present evidence and argument concerning the classification to a representative of the Department who is authorized to resolve the dispute.

III. PROCEDURE AFTER ISSUANCE OF A DETERMINATION, BUT BEFORE AN APPEALS CONFERENCE ATTORNEY HAS ISSUED A NOTICE THAT AN APPEALS CONFERENCE HAS BEEN SCHEDULED

A. Filing of Petition for Redetermination or Claim for Refund

The Revenue and Taxation Code provides that, after the issuance of a notice of determination, the fee payer may file a petition for redetermination and request an appeals conference. The Revenue and Taxation Code also provides that a fee payer may file a claim for refund of any fee that has been paid and request an appeals conference concerning the claim. Board staff will provide the Department's designated representative with a quarterly summary of all pending hazardous waste fee petitions for redetermination or claims for refund that are in appeals status. After the determination is issued or the fee is paid, the amounts due can be changed only after Board staff certifies that some or all of the amount is not due, or that the fee should be refunded in whole or in part.

B. Discussions and Meetings Regarding Fees

If a fee payer contacts the Department concerning a fee during this period, the Department will refer the fee payer to the Board staff for assistance when appropriate.

The Department may also discuss factual matters underlying liability for the fee with the fee payer. The Department will advise the Environmental Fees Administrator of any meetings scheduled with the fee payer that may have a direct impact on the application of the fee, and Board staff may attend the meetings. However, the Department may meet and negotiate with the fee payer, outside the presence of Board staff, for purposes of resolving a dispute pursuant to Health and Safety Code Section 25205.23. The Environmental Fees Administrator will advise the Department's designated representative of any meetings scheduled with the fee payer concerning the fee, and Department staff may attend the meetings.

C. Department's Decision that Determination Should Be Changed or Fee Refunded

If the Department determines, based on its review of the facts or interpretation of the law, that the facts are such that the fee specified in the determination should be changed, or that a refund should be made, the Department's designated representative will contact the Environmental Fees Administrator in writing and recommend that the determination be changed or the fee refunded. The Department will set forth the legal and factual basis for the change or refund. If the Board staff agrees with the Department's position, the Board staff will notify the fee payer of any change or refund. If the Board staff does not agree with the Department's position, it will notify the Department's designated representative in writing of its reasons for disagreeing, and will continue to process the determination or claim for refund.

D. Board Staff Request for Department Information

When a petition for redetermination or a claim for refund is filed, the Board staff may ask the Department for information concerning the factual basis for imposition of the fee, particularly in cases where the fee is based on information provided by the Department (for example, facility fees or activity fees). Such a request will be made in writing to the Department's designated representative by the Environmental Fees Administrator or his or her designee. The Department will respond in writing to a Board staff request for information concerning a pending petition for redetermination or claim for refund within 30 days. The Department, by written notice to the Environmental Fees Administrator, may extend this period for an additional 30 days. If no written response is received by the Environmental Fees Administrator within the specified time period, the petition or claim will be set for an appeals conference.

E. Petition or Claim Based on Argument that Waste is Not Hazardous

If the Board staff receives a petition for redetermination or claim for refund, filed pursuant to the Revenue and Taxation Code, which is based entirely or in part on the argument that the material is not a waste or a hazardous waste, Board staff will review the facts of the case and process the petition or claim in accordance with (1) or (2) below.

- (1) If the material was manifested on a hazardous waste manifest and the manifest identifies the material as hazardous waste, or identifies the waste as one that is listed in the Department's regulations as a hazardous waste, Board staff will accept the petition or claim, and advise the fee payer that he or she must first seek relief from the Department. Once the petitioner demonstrates to Board staff that he or she has sought relief from the Department, the petition or claim will be held in abeyance until the Department advises the Environmental Fees Administrator, in writing, of the correct classification of the material.
- (2) If the manifest did not identify the material as hazardous waste, and did not identify the waste as one that is listed in the Department's regulations as a hazardous waste, Board staff may accept and process the petition for redetermination or claim for refund. However, any determination as to the correct classification of the material as a waste and/or a hazardous waste will be made by the Department.

It is agreed that the Department will implement a procedure for resolving disputes concerning the classification of a material as a waste or hazardous waste that provides the fee payer an opportunity to present evidence and argument concerning the classification to a representative of the Department who is authorized to resolve the dispute.

F. Settlement Procedure

The Department may enter into settlements of disputed fees pursuant to Health and Safety Code section 25205.23. Before requesting settlement negotiations, a fee payer should contact Board staff to discuss resolution of the disputed issues. If the fee payer continues to object to the fee after Board staff has reviewed the disputed issues, Board staff may inform the fee payer that he or she can contact the Department's representative for the purpose of settlement negotiations.

If the Department accepts a matter for negotiation, it will notify the Board so that the Board may refrain from taking collection action or setting the matter for an appeals conference pending the outcome of the negotiation. The Department will also promptly notify Board staff if negotiations reach an impasse and settlement is no longer feasible. Board staff, on request, will provide the Department's representative with any information in its possession that might be pertinent to the negotiations. If negotiations are successful, the Department will prepare a written agreement. Once it has been signed by all necessary parties, the Department will forward a copy of the fully-executed document to Board staff so that the Board may implement the terms of the settlement.

**IV. PROCEDURE AFTER THE APPEALS CONFERENCE HAS BEEN SCHEDULED**

**A. Scheduling of Appeals Conference and Briefs**

The appeals conference attorney will send the Department's designated representative a notice of the scheduling of an appeals conference on a petition for redetermination or claim for refund. The notice will be sent at least 30 days before the date the appeals conference is scheduled to be held. The Department will, as soon thereafter as possible, designate a staff person to represent it in the matter and so advise the appeals conference attorney and the Environmental Fees Administrator in writing. The designated Department appeals conference representative is then authorized to discuss the issues of the case and scheduling matters directly with the appeals conference attorney or other Board staff. The Department's appeals conference representative will send copies of any briefs or other written submissions concerning the case to the Environmental Fees Administrator and the petitioner. The Board will send a copy of the petition summary and any other written documents prepared for the appeals conference to the Department's appeals conference representative.

**B. Department's Decision that Matter Can Be Resolved Without an Appeals Conference**

If the Department determines, based on its review of the facts or interpretation of the law, that the facts are such that the fee at issue should be changed and that the matter may be resolved without an appeals conference, the Department's appeals conference representative will contact the Environmental Fees Administrator and recommend in writing that the appeals conference be canceled. The Department will set forth the factual and legal basis for its decision.

If Board staff agrees that the appeals conference should be canceled, the Environmental Fees Administrator will request that the appeals conference attorney cancel the conference, and the Board staff will notify the fee payer of the cancellation and of any change in the fee. If Board staff does not agree with the Department's position, it will notify the Department's designated representative in writing of its reasons for disagreeing, and the matter will proceed to an appeals conference.

V. **PROCEDURE AT APPEALS CONFERENCE**

Representatives of both the Board staff and the Department may appear at and fully participate in the appeals conference. If warranted, the Board representative and Department attorney may present differing opinions at the conference.

VI. **PROCEDURE AFTER APPEALS CONFERENCE**

A. **Request for Reconsideration**

Board staff and/or the Department can request that the appeals conference attorney reconsider his or her decision and recommendation. The Department's request for reconsideration may be submitted to the appeals conference attorney by the Department's appeals conference representative, with copies to the fee payer and the Environmental Fees Administrator. A copy of any request for reconsideration submitted by Board staff will be sent to the fee payer and the Department's appeals conference representative.

B. **Resolution of Issues Raised in Petition or Claim**

Once the appeals conference has been held, the Department will no longer seek to resolve the issues raised in the petition for redetermination or claim for refund by dealing directly with the Environmental Fees Administrator or the fee payer. Any attempt to resolve those issues at this point must be addressed to the appeals conference attorney through a request for reconsideration or modification of the decision and recommendation.

VII. **BOARD HEARING**

A. **Department's Appeal of Decision and Recommendation to the Board**

Either the Property and Special Taxes Department or the Department of Toxic Substances Control may request that the Board of Equalization review an appeals conference attorney's decision and recommendation.

If the Department wishes to seek Board of Equalization review of the appeals conference attorney's decision and recommendation, the Department's designated representative will so notify the Chief of the Board Proceedings Division, in writing, within the time period prescribed by the appeals conference attorney.

B. Scheduling of Hearing and Briefs

The Board staff will advise the Department's appeals conference representative of the scheduling of the case for hearing before the Board of Equalization. The Department's appeals conference representative will provide the Environmental Fees Administrator and the Assistant Chief Counsel for Business Taxes with a copy of any brief or written submission to the Board concerning the hearing. The Board staff will provide the Department's appeals conference representative and the fee payer with a copy of the summary prepared for the hearing.

C. Appearance at Hearing

Representatives of the Board staff and the Department may appear at the hearing. The Board's representative will present the position of the Department, and the Department's representative may participate and answer any questions directed to him or her by the Board Members. If the Board staff and Department disagree on any of the issues to be addressed at the hearing, the Board's representative will present the Board staff's position, and the Department's representative will present the Department's position.

D. Standard of Review

As the administrative agency responsible for enforcing the Hazardous Waste Control Law (HWCL), the Department shall be given deference in how it implements definitions and regulations that impact the enforcement of the HWCL. Therefore, the Board should avoid making any determination that conflicts with that type of implementation or factual finding. For purposes of this provision, a definition or regulation impacts the enforcement of the HWCL if it relates to the manner in which the HWCL is enforced in ways other than the amount of tax or fee that will be collected, such as definitions of "responsible party," "closure," or "disposal." The HWCL means chapters 6.5 (commencing with section 25100) and 6.8 (commencing with section 25300) of division 20 of the Health and Safety Code, and the regulations promulgated pursuant to either chapter. As a tax collection agency, the Board shall be given deference on general rules relating to taxation, such as the statute of limitations, whether an entity is a corporation, or whether a fee may be returned when an application is withdrawn.



E. Board Action

The Board staff will advise the Department's appeals conference representative of any action taken by the Board of Equalization concerning the case.

VIII. PROCEDURE DURING LITIGATION

A fee payer may file a suit for refund of a hazardous waste fee. The initial referral to the Attorney General's Office will normally be made by the Board staff to the Business and Tax Law Section. The Attorney General's Office will determine whether participation in the case by the Environmental Law section is necessary or appropriate.

Board staff will send a copy of the complaint or other document initiating such a lawsuit to the Department's Chief Counsel. The Department's Chief Counsel will inform the Assistant Chief Counsel for Business Taxes of the name of the Department attorney assigned to the case. The Assistant Chief Counsel will inform the Deputy Attorney General handling the case for the Board staff of the name of the Department attorney.

The Assistant Chief Counsel will send the Department attorney copies of significant correspondence with the Deputy Attorney General, and will advise the Department attorney concerning any settlement negotiations.

The Department will provide the Assistant Chief Counsel and Deputy Attorney General with any technical assistance necessary in the litigation of the case.

IX. EXCHANGE OF INFORMATION

The Environmental Fees Administrator will provide the Department's designated representative with copies of drafts of the Board's Environmental Fee Newsletter prior to publication and will give the Department an opportunity to comment concerning any articles in the draft newsletter.

The Department's designated representative will provide the Environmental Fees Administrator with copies of proposed Fee Bulletins prior to their distribution, and will give the Board an opportunity to comment concerning any draft Fee Bulletin.

The Department will advise the Environmental Fees Administrator concerning the fee implications raised by any enforcement actions or other activities undertaken by or on behalf of the Department.

Board staff will make available to the fee payer any information contained in the fee payer's file, excluding confidential information concerning another fee payer and information that is protected by the attorney-client privilege or otherwise protected by statute from disclosure.